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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3824 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No.

NITESH J SHAH

Versus

HINDUSTAN GAS INDUSTRIES LTD.

Appearance:

MR RV DESAI for Petitioners

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/06/98

ORAL JUDGEMENT

This petition is filed by Nitish J.Shah and
Rajrshi Kamdar Sangh and by this petition the petitioners
want this court to modify and amend the order of
reference made by the Dy.Commissioner of Labour, Baroda
on 27.11.96 to the Industrial Court, Baroda.

2. Ref.(ITC) No.143 of 1996 is registered before the Industrial Tribunal, Baroda on the strength of the reference made by the Dy. Commissioner of Labour, Baroda on 27.11.96. It seems that said reference was made by the Dy. Commissioner of Labour on account of an industrial dispute raised by Panchmahal Jilla Mazdoor Sangh as representing the workmen of Hindustan Gas Industries Ltd. The Dy. Commissioner of Labour has made the said reference on finding that there was no possibility of any conciliation.

3. The petitioners have filed an application before the Industrial Tribunal claiming that as a matter of fact they have got more workmen working in the Hindustan Gas Industries Ltd. as members of their union and they are the real representative of the workmen of Hindustan Gas Industries Ltd and therefore, they should be allowed to join as party in the said reference. Admittedly, no order on the said application of the present petitioners has been passed by the Industrial Tribunal till today.

3. At the cost of repetition it must be stated that the claim of the present petitioners that they are representing the real interest of workmen of Hindustan Gas Industries Ltd. is not yet decided by the Industrial Court till this date. Admittedly, present petitioners were not party to the original proceedings in which the reference is made. Therefore, in the circumstances, present petitioners will have to first get their claim that they were representing the real interest of the workmen decided by the appropriate authority in order to substantiate their claim that they should be heard on behalf of the workmen. Now apart from this if the claim made by the petitioners is considered, then it would be quite clear that the workmen of Hindustan Gas Industries Ltd. or the union representing their interest will have to first approach the State Government in order to have correct and proper reference of the Industrial Dispute which has been raised on behalf of the workmen.. Admittedly in Hindustan Gas Industries Ltd. there are more than 300 workmen. It seems that the conciliation officer while submitting his report to the Dy. Commissioner of Labour, Baroda has committed a mistake in mentioning that there are less than 100 workmen in the said industry. Because of the said mistake committed by the reporting officer, the Dy. Commissioner of Labour on finding that conciliation between the parties is not possible, has made a reference of the Industrial Dispute to the Industrial Court as Deputy Commissioner of Labour is designated by the State Government to make a reference

of an industrial dispute in case of an industry which is having less than 100 workmen. It is quite clear that the original reference made by the Dy. Commissioner of Labour of the dispute between the industry and its workmen is made by an unauthorised person and therefore, said reference will be invalid. Therefore, it is necessary for the workmen and the union representing the interest of the workmen to bring to the notice of the State Government the error committed by the Dy. Commissioner of Labour, Baroda in making the reference of the industrial dispute, on account of a bonafide mistake made by the Reporting Officer in mentioning in the report that there are less than 100 workmen. Therefore, it is necessary for the present petitioner or union representing the interest of the workmen of the industry firms to approach the State Government and to seek review of the earlier order passed by the Dy. Commissioner of Labour and to have proper reference of the industrial dispute between the parties. In case if the State Government fails to act according to law, then only this court will interfere with the said action of the State Government. Admittedly there seems to be a bonafide mistake on the part of the State Government and therefore, it is necessary for the petitioner to approach the State Government and seek redressal of their grievances and only in case if they are unable to get their grievances redressed, they are at liberty to approach this Court. But at this stage I reject this petition with no order as to costs.